

will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BX-2013-058, and should be submitted on or before January 7, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71044; File No. SR-NASDAQ-2013-150]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Modifications to Fees and Credits Under Rules 7014 and 7018

December 11, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on November 29, 2013, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III, below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to make changes to its schedule of fees and credits applicable to execution of orders under Rule 7018, and related changes in Rule 7014. NASDAQ proposes to implement the proposed rule change on December 2, 2013. The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

In November 2013, NASDAQ introduced a rebate tier under which it provides a credit of \$0.0029 per share executed for displayed orders that provide liquidity if a member (i) has shares of liquidity provided in all securities during the month representing more than 0.10% of Consolidated Volume during the month, through one or more of its NASDAQ Market Center MPIDs, and (ii) adds Total NASDAQ Options Market ("NOM") Market Maker Volume, as defined in Chapter XV, Section 2 of the NOM rules, of 90,000 or more contracts per day executed during the month through one or more of its NOM MPIDs.<sup>3</sup> NASDAQ is amending the tier by reducing the requirement for Total NOM Market Maker Volume to 80,000 or more contracts per day. Pricing tiers that require participation in both the NASDAQ Market Center and NOM recognize the prevalence of trading in which members simultaneously trade different asset classes within the same strategy. Because cash equities and options markets are linked, with liquidity and trading patterns on one market affecting those on the other, NASDAQ believes that pricing incentives that encourage market participant activity in NOM also support price discovery and liquidity provision in the NASDAQ Market Center. The change enhances these incentives by reducing the requirement for participation in this tier.

Second, NASDAQ is amending Rule 7018(e), which governs fees for orders that execute in the NASDAQ Opening Cross (the "Cross"), to eliminate an

erroneous reference to a potential \$0.0005 per share executed charge for "Day" orders (*i.e.*, orders designated to have a time-in-force under which they remain in effect until executed or the end of either regular market hours at 4:00 p.m. or the end of the System hours at 8:00 p.m.) that execute in the Cross. Charging Day orders that participate in the Cross would mean that virtually all orders in the Cross would be subject to a fee, which is not consistent with NASDAQ's intention or past practice. Rather, the reference appears to have been included in the rule in error. Accordingly, NASDAQ is deleting the reference to make it clear that Day orders executing in the Cross are not to be charged.

Finally, NASDAQ is amending the definition of "Consolidated Volume" in Rules 7018 and 7014 to exclude executed orders with a size of less than one round lot. In addition, NASDAQ is modifying some of the words used in both definitions to make them use consistent terminology (but is not thereby changing their meanings). The amended definitions refer to "the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month, excluding executed orders with a size of less than one round lot." The exclusion for executed orders of less than a round lot is necessitated by recent amendments to the Consolidated Tape Association and NASDAQ UTP Plans<sup>4</sup> under which odd lots must be reported to the consolidated tape. These amendments are taking effect in December 2013. When calculating a member's percentage, NASDAQ has historically included odd lots in the member's own total volume, but excluded them from Consolidated Volume, since they have not historically been included in the trades reported to consolidated transaction reporting plans. Accordingly, including odd lots in the calculation of a member's percentage of Consolidated Volume would make it more difficult for members to achieve certain percentages, and thus could constitute an unintended de facto price increase. To avoid this result, odd lots will be excluded from the definitions of Consolidated Volume for pricing purposes, but would continue to be included in the member's own total volume.

<sup>4</sup> Securities Exchange Act Release No. 70794 (October 31, 2013), 78 FR 66789 (November 6, 2013) (SR-CTA-2013-05); Securities Exchange Act Release No. 70793 (October 31, 2013), 78 FR 66788 (November 6, 2013) (File No. S7-24-89).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 70860 (November 13, 2013), 78 FR 69512 (November 19, 2013) (SR-NASDAQ-2013-138).

## 2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>5</sup> in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,<sup>6</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The change to the tier for members active in both the NASDAQ Market Center and NOM is reasonable because it broadens the availability of a price reduction for members that support liquidity on both markets. The changes are consistent with an equitable allocation of fees because the pricing tier requires significant levels of liquidity provision, which benefits all market participants, and because activity in NOM also supports price discovery and liquidity provision in the NASDAQ Market Center due to the increasing propensity of market participants to be active in both markets and the influence of each market on the pricing of securities in the other. Moreover, the change has the potential to make the applicable credit available to a wider range of market participants by reducing the threshold for qualification. The change is not unreasonably discriminatory because market participants may qualify for a comparable or a higher rebate through alternative means that do not require participation in NOM, including through existing volume-based NASDAQ Market Center tiers, the use of Designated Retail Orders, or through a combination of qualification for volume-based tiers and participation in NASDAQ's Investor Support Program under Rule 7014.

The change with respect to Day orders that execute in the Cross is reasonable because it makes it clear that the execution of such orders in the Cross is free of charge, rather than being subject to a potential \$0.0005 per share fee. The change is consistent with an equitable allocation of fees and is not unfairly discriminatory because members entering Day limit orders before the Cross do not generally have a strong expectation that such orders will execute in the Cross; rather, although such orders are given the opportunity to execute in the Cross if their limit price is consistent with the Cross price, their

designation as Day orders would generally reflect an expectation that the order will not execute but rather will post to the NASDAQ book and execute thereafter only if the market moves in a manner consistent with the order's limit price. Accordingly, NASDAQ believes that it is equitable and not unfairly discriminatory to make the execution of such orders free when they do happen to execute in the Cross.

The change with respect to exclusion of odd lots from the definition of Consolidated Volume is reasonable because it avoids a de facto price increase that could occur due to the upcoming requirement to report odd lots to the consolidated tape. Similarly, the change is consistent with an equitable allocation of fees and is not unfairly discriminatory because it will maintain the status quo with respect to pricing tiers and incentive programs that require calculations based on Consolidated Volume. Thus, the change avoids a potential inequitable and unfair result under which members with volumes close to a required percentage would be unable to achieve a pricing tier for which they had formerly qualified.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. NASDAQ notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, NASDAQ must continually adjust its fees and rebates to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and rebates in response, and because market participants may readily adjust their order routing practices, NASDAQ believes that the degree to which fee or rebate changes in this market may impose any burden on competition is extremely limited. In this instance, the change to the tier with respect to members active in NASDAQ and NOM will serve to decrease members' costs, thereby enhancing NASDAQ's competitiveness. Similarly, the change with respect to Day orders executing in the Cross confirms the absence of a

charge with respect to such orders, and the change with respect to the definition of Consolidated Volume avoids a potential de facto price increase, thereby also enhancing NASDAQ's competitiveness. Because members and competing order execution venues remain free to adopt competitive responses, the changes do not impair the ability of markets or market participants to maintain their competitive standing in the financial markets.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and paragraph (f) of Rule 19b-4<sup>8</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2013-150 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2013-150. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f).

only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2013-150 and should be submitted on or before January 7, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71054; File No. SR-Topaz-2013-12]

### Self-Regulatory Organizations; Topaz Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees

December 12, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on November 27, 2013, the Topaz Exchange, LLC (d/b/a ISE Gemini) (the "Exchange" or "Topaz") filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-

regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Topaz is proposing to amend its Schedule of Fees to exclude from its ADV calculations any trading day on which the Exchange is closed early for holiday observance. The proposed rule change is available on the Exchange's Internet Web site at <http://www.ise.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to exclude from its average daily volume ("ADV") calculations any trading day on which the Exchange is closed early for holiday observance. The Exchange provides tiered rebates to market participants that add liquidity in Standard Options and Mini Options based on members' ADV in a given month. On October 1, 2013 the Exchange filed with the Commission an immediately effective rule filing that, among other things, amended its Schedule of Fees to permit the Exchange to exclude from its ADV calculation, when determining applicable rebate tiers, any day that the market is not open for the entire trading day.<sup>3</sup> Currently, this allows the Exchange to exclude days where the Exchange declares a trading halt in all securities or honors a market-wide trading halt declared by another market. In that filing, however, the Exchange noted that, in contrast to the NASDAQ OMX

PHLX, LLC ("PHLX") and NASDAQ Options Market ("NOM") filings on which this language was based,<sup>4</sup> it would not exclude days on which the Exchange is closed early for holiday observance. The Exchange has since determined that it would be more equitable to exclude these days as well. While members are aware in advance of days subject to an early scheduled close—for example, the Friday after Thanksgiving—these are still low volume days, and including these days in the ADV calculation would have the detrimental effect of lowering members' daily and monthly ADV and thereby qualifying members for lower rebates. The Exchange believes that this effective cost increase during months where the Exchange has scheduled early market closes is undesirable to the Exchange and its members, and is therefore proposing to interpret this provision in the same manner as NOM and PHLX.<sup>5</sup> The Exchange notes that it will not be making any textual changes to its fees as this proposed change brings its interpretation in line with that of other markets with substantially similar language to that already included in the Schedule Fees [sic].<sup>6</sup>

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>7</sup> in general, and Section 6(b)(4) of the Act,<sup>8</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that it is equitable and reasonable to eliminate days subject to an early scheduled closed [sic] from its ADV calculation because it preserves the Exchange's intent behind adopting volume-based pricing, and conforms the rules of the Exchange with those of other markets. The Exchange further believes that the proposed change is non-discriminatory because it applies equally to all members and to all volume tiers.

<sup>4</sup> See Securities Exchange Act Release Nos. 70472 (September 23, 2013), 78 FR 59738 (September 27, 2013) (PHLX-2013-93); 70470 (September 23, 2013), 78 FR 59740 (September 27, 2013) (NASDAQ-2013-117).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 70670 (October 11, 2013), 78 FR 62815 (October 22, 2013) (Topaz-2013-08).